

Founded in 1852
by Sidney Davy Miller



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April 27, 2018

Attn: Compliance Tracker, AE-18J
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Re: Section 208(a) Request to Provide Information
Diesel Ops, LLC., 2956 Frembes Road, Waterford, Michigan 48329

Dear Sir or Madam:

I am legal counsel to Diesel Ops, LLC., of Waterford, Michigan. This is in response to the U.S. Environmental Protection Agency's request to provide information pursuant to Section 208(a) of the Clean Air Act dated February 15, 2018, and received at Diesel Ops, LLC. (Diesel Ops), on February 27, 2018. Upon request from Diesel Ops, on March 20, 2018, the EPA has granted a 30 day filing extension from March 28, 2018 to April 28, 2018. Furthermore, on April 11, 2018, the EPA has granted an additional extension for Request 4(c) until May 18, 2018.

The Diesel Ops narrative response to the Section 208 request is included as Enclosure 1. Two USB drives which contain the Appendices for the Diesel Ops response to the Section 208 request are included as Enclosure 2. USB 1 contains Attachments 3, 4, 5 and 6, none of which include confidential business information. USB 2 contains Attachments 1 and 2, both of which contain **Confidential Business Information (CBI)**. An Index of Attachments is included in the narrative response. Enclosure 2 contains all Appendices referenced in Diesel Ops narrative response to the Section 208 request.

I trust this response provides the information you need. Diesel Ops takes seriously its regulatory obligations and has attempted to provide all of the information requested in the time provided. Because the request sought records dating back as far as 2015, Diesel Ops reserves the right to supplement this response should it become aware of any additional records that would have been included if discovered earlier.

Please feel free to contact me with any questions.

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

Attn: Compliance Tracker, AE-18J

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April 27, 2018

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 

Steven E. Chester

SEC/mg
Enclosures

CC: Nick Piccolo, Diesel Ops

Enclosure 1

Diesel Ops, LLC. Narrative Response to
February 15, 2018 U.S. Environmental
Protection Agency Section 208(a)
Information Request

Introduction

Following this introduction are responses to the EPA Request to Provide Information Pursuant to Clean Air Act, dated February 15, 2018.

Diesel Ops is a retailer of Automotive Vehicle Accessories and Parts, specializing in diesel vehicles. We started out in 2013 as a small family and friends business literally beginning in our living rooms but expanding to now occupy our space located in Waterford Michigan, and supporting 16 employees. Being a friends and family business, we have always envisioned a place where employees, management and owners alike look forward to going to work each day with a positive, enthusiastic attitude. As owners, we are on premises every work day and we work in unison with our team and believe in true leadership. We believe that if we take care of our employees and show them appreciation, then they will take care of our customers ten-fold. Our goal is to continue to provide a rewarding and authentic work place for years to come, give back to our employees and provide a positive work experience.

Despite being a small business, Diesel Ops strives to have as many brands as our customers seek to always be able to meet our customers demand. On our website, we list over 70,000 products that are available to our customers. Diesel Ops is principally a retailer in the automotive industry, yet we do offer a few brands as a wholesaler to other retailers. We do not manufacture any products, but do white label (place our name) on a few products to offer a better value with our name.

In responding to this Information Request, we have made a good faith effort to be over-inclusive in providing information. We note that the definitions provided in the Request are exceedingly broad and can be considered to apply to parts that the EPA may not have intended to include. Without waiving our objections to the Request being overly broad, we have provided information on many of the products that are presently on the market and made available by numerous manufacturers, wholesalers and retailers. It is important to note that all of our customers that purchase merchandise from Diesel Ops must agree to our Terms and Conditions/Liability Waiver, as follows:

By entering your information below, and pressing the "I Accept" button, the person that is activating this product makes the following representations, and acknowledges and agrees to the following terms and conditions:

This off-road race only product ("this Product") is designed and intend for use in organized, amateur and professional racing events, but is limited to closed-course racing and open-course racing that is formally sanctioned by a recognized racing organization involving the motor vehicle in which it is installed (the "Vehicle"). It is not for use on public highways or roads nor is it for recreational off-road use other than solely for competition purposes. The person or entity buying this Product and/or using this Product (the "User") agrees to use the Vehicle solely for competition uses as described herein.

The User signing this disclaimer acknowledges and hereby indemnifies and saves harmless Diesel ops, LLC. its officers, employees, agents, distributors and dealers for any damages, penalties, fines, expenses or other costs which may arise from the use of this product and without limiting the generality of the foregoing specifically acknowledges the following:

Use of this Product for purposes other than solely for competition is a violation of federal law and may violate applicable state or local environmental, motor vehicle and other laws. The User warrants that the product shall only be used in sanctioned closed-circuit events. That use of this Product may violate warranties from the manufacturer of the Vehicle or from others. That use of this Product may make the Vehicle unfit or unsafe for the purposes intended or for any purpose and cause personal injury, property damage or death. That the installation of this Product, improper installation of this Product, use of this Product with other components or failure to use this Product in conjunction with other components, could result in or cause personal injury, property damage or death.

THIS PRODUCT IS FOR COMPETITION USE ONLY. ALL OTHER USES ARE CONTRARY TO FEDERAL LAW. IF YOU INTEND THIS PRODUCT FOR HIGHWAY OR NON-COMPETITION OFF-ROAD PURPOSES DO NOT PURCHASE OR INSTALL THIS PRODUCT.

Accordingly, notwithstanding the foregoing, and without waiving any of the foregoing qualifications and objections, below Diesel Ops has included the relevant numbered request followed by Diesel Ops response. The numbers of the responses below correspond to the numbers of the specific requests included in Appendix B of the February 15, 2018 request.

Diesel Ops has made a diligent and good faith effort to timely respond to the U.S. Environmental Protection Agency (EPA) Information Request. In providing this response, Diesel Ops respectfully reserves its rights to object to the scope and breadth of the Information Request including, without limitation, objecting that the Request exceeds the authority granted EPA under Section 208(a) of the Clean Air Act (CAA), 42 U.S.C. 7542(a); the Request calls for legal conclusions and/or seeks information not relevant to the purpose of the Request; and the Request uses terms and phrases that are vague, overbroad or ambiguous.

In addition to the answers below, Diesel Ops has provided two USB Storage Drives that include the referenced attachments. **Please note that USB 2 contains Confidential Business Information and is labeled as such.**

Index of Attachments

Request	Attachment	File Name(s)	Confidential Business Information Reference	USB Drive Location
1(a)-1(c)	1	Diesel Ops 1a-c Spreadsheet	CBI	2
2(a)-2(k)	2	Diesel Ops 2a-k Spreadsheet	CBI	2
3(a)-3(d)	3	Diesel Ops 3a-d Spreadsheet, [add folder names for 3(c) and 3(d)]	Not CBI	1
3(c)	3	3(c) - Ads	Not CBI	1
3(d)	3	3(d) – Manuals	Not CBI	1
4(d)	4	4(c) – Provided or Installed Products	Not CBI	1
5	5	Diesel Ops Liability Waiver	Not CBI	1
6	6	Diesel Ops Liability Waiver	Not CBI	1

Request No. 1

1. List in an **electronic, unlocked spreadsheet**, by product number and identifying product name, each product (as defined in Appendix A: Definitions, Paragraph No. 11 of the February 15, 2018 information request) which:
 - (a) Changes, affects, modifies, bypasses, or renders inoperative any emission control component, element of design, or emission related part or component including but not limited to, the DPF system, EGR system, catalyst system, OBD, SCR, or sensors, signals, or records related to such systems;
 - (b) Simulates the operation of any emission control component and/or related parts including but not limited to, the DPF system, EGR system, catalyst, OBD, SCR, or sensors, signals, or records related to these systems (e.g a tuner); and/or
 - (c) Can be programed to modify engine operating parameters, such as injection timing, fuel pressure, and/or pulse width, emission control parameters, or OBD functions including, but not limited to, those parameters sensed or controlled by the ECM.

Request No. 1, Response:

In responding to this request, Diesel Ops understands the request as seeking a product number (“stock keeping unit” or “sku”) and identifying product name which meet the above noted criteria. Based on this understanding, a table of all products responsive to item 1(a), (b), and (c) is provided as **Attachment 1**.

Diesel Ops asserts that this request is overly broad and, as written, includes parts that are for off-road or competition race use only as agreed to by customers through an affirmative action prior to purchase as well as identified in operating manuals. The products identified in this answer are not intended to be used for on-road purposes. (See Introduction above.)

Please note that Diesel Ops considers the information provided in this response to include Confidential Business Information. Attachment 1 can be found in USB drive number 2.

Request No. 2

In a separate **electronic, unlocked spreadsheet**, for each product identified in Request 1 above, provide the following information:

- (a) The product number;
- (b) The identifying product name;
- (c) The product manufacturer’s name and address;
- (d) The product supplier’s name and address (if different than manufacturer’s);
- (e) The type of vehicle for which the product is designed, used, or sold; including the make(s), model(s), model year(s), engine type(s), year(s), and expected use(s) (i.e. agriculture, construction equipment, on-road diesel, etc.);
- (f) For all products except services, a description of what the product does and how the product operates, and for all products that are or include services, a description of the service and which other products are involved in the service;
- (g) The quantity of product that was manufactured, and/or produced by you each calendar year (or partial year if full year not yet available);
- (h) The quantity of product that was purchased and/or imported by you each calendar year (or partial year if full year not yet available);
- (i) The quantity of product that was distributed, offered for sale, and/or sold by you, by year (or partial year if full year not yet available);
- (j) The quantity of product that was provided, and/or installed by you, by year (or partial year if full year not yet available);
- (k) Indication of whether the product has been emissions tested and/or certified.

Request No. 2, Response:

In responding to this request, Diesel Ops understands the request as seeking additional information about the product manufacturer, supplier, part application and use, as well as volumes of parts that were manufactured, purchased, imported, distributed, installed along with emission testing or certification information for products identified in Attachments 1.

Diesel Ops asserts that this request is overly broad and includes parts that are for off-road or competition race use only as agreed to by customers through an affirmative action prior to purchase as well as identified in operating/installation manuals. The products identified in this answer are not intended to be used for on-road purposes.

Based on this understanding, a table of all products responsive to Request 2(a)-(k) is provided as **Attachment 2. Please note that Diesel Ops considers the information provided in this response to include Confidential Business Information. Attachment 2** can be found on **USB Drive number 2.**

Request No. 3

For products identified under Request 1, provide the following:

- (a) A list of media through which Diesel Ops has advertised (i.e. website, social media, newspapers, verbal, trucking shows, conventions, etc.), specifying the name of the media and/or date of truck show or convention;
- (b) A list of Universal Resource Locators (URLs) for any website or social medial page that you use or have used to advertise any of the products and/or facilitate sales;
- (c) Copies of any advertisements to sell, distribute, or install each product, including advertisements on websites and in other media; and
- (d) Copies of any installation or operation instructions, guides, or materials for each product.

Request No. 3, Response:

In responding to this request, Diesel Ops understands the request as seeking information related to advertising related to products identified in Request 1. A list of media through which Diesel Ops has advertised, a list of URLs for websites that have been used to advertise or facilitate sales, and links to some installation or operation instructions, guides and materials for each product identified in Request 1 is provided as **Attachment 3**. Additionally, links to some advertisements (Request 3(c)) and installation or operation instructions, guides or materials¹ (Request 3(d)) for

¹ Note: Installation or operation instructions, guides or materials for the products clearly identify the products are intended for off-road use only or that the purchaser is obligated to use the part(s) in conformance with state and federal laws.

each product are provided in a separate folder within **Attachment 3. Attachment 3 can be found on USB Drive number 1.**

Request No. 4

For products identified in Request 1 above, provide copies of all receipts or invoices, organized by calendar year, for any and all of the products that were:

- (a) Manufactured or produced by you;
- (b) Purchased or imported by you;
- (c) Sold or distributed by you;
- (d) Provided or installed by you.

Request No. 4, Response:

In responding to this request, Diesel Ops understands the request as seeking copies of receipts or invoices, organized by calendar year, for products identified in Request 1 that were manufactured, produced, purchased, imported, sold, distributed, provided or installed by Diesel Ops. A response to Request 4(a) is provided below. A response to 4(b) and 4(c) remain outstanding and will be submitted to the EPA by May 18, 2018. Digital copies of requested receipts and/or invoices responsive to Request 4(d) are provided in .PDF format in **Attachment 4.**

Diesel Ops asserts that this request is overly broad and includes parts that are intended for off-road or competition race use only as agreed to by customers through an affirmative action prior to purchase as well as identified in operating manuals. The products identified in this answer are not intended to be used for on-road purposes.

- 4(a) - Diesel Ops asserts that it does not manufacture or produce any products. A limited number of products that are relevant to Request 1 are white labeled (i.e. manufactured by others but the Diesel Ops name put on the packaging) which are all included in the prior responses. Because Diesel Ops does not manufacture or produce those items, none are included here for the purposes of responding to Request 4(a).
- 4(b) – Diesel Ops acknowledges that the response to this request is due to be submitted to the EPA on April 27, 2018. However, during the assembly of documents Diesel Ops has identified the nature and extent of this request is extensive enough that it will not be possible to complete the document assembly in time for this submission. Diesel Ops respectfully requests an extension for provided a response to this request to coincide with the response to 4(c), below, as approved by the EPA.
- 4(c) - **Please note that Diesel Ops has requested and the EPA has granted an extension to respond to Request 4(c) until May 18, 2018.**
- 4(d) – Documents responsive to Request 4(d) are provided in Attachment 4.

Attachment 4 can be found on USB Drive number 1.

Request No. 5

For each product identified in Request 1 above, provide any and all documentation that Diesel Ops collected from customers to verify or ensure that the vehicles receiving the product offered for sale by you are not for on-road use and are operated only off of public and/or highway roads.

Request No. 5, Response:

In responding to this request, Diesel Ops understands the request as seeking documentation collected from customers that is/was used to verify the products will not be used in an on-road capacity.

Diesel Ops believes the burden of evaluating the specific customer use for every transaction in every jurisdiction that a product is purchased or intended to be used is one that cannot be reasonably accomplished and therefore requires its customers read and agree to the Terms and Conditions/Liability Waiver prior to the completion of a purchase. Digital copies of requested documentation responsive to Request 5 are provided in .PDF format in **Attachment 5**.

Request No. 6

For each product identified in Request 1 above, provide copies of any disclaimers, waivers, notices or releases of liability, assumption of risk and/or indemnity agreements, etc. signed by Diesel Ops, its customers, and/or its manufacturers. Provide any documents which relate to knowledge, liability and/or risk associated with the removal and/or modification of emission control components and/or engine parameters (as described in Request 1 (a), (b) and (c)). Some such documents are often, but not always, referred to as "liability waivers."

Request No. 6, Response:

In responding to this request, Diesel Ops understands the request as seeking (1) disclaimers, waivers, notices or releases of liability, assumption of risk and/or indemnity agreements executed by Diesel Ops or that Diesel Ops has required by others, and (2) any documents evidencing knowledge, liability and/or risk associated with the removal and/or modification of emission control components and/or engine parameters. Digital copies of requested documents responsive to Request 6 are provided in .PDF format in **Attachment 6 which** can be found on **USB Drive number 1**.

Request No. 7

For each product identified in Request 1 above, state whether you or any other entity conducted tests measuring emission of hydrocarbons (HC), carbon monoxide (CO), NOx, and/or PM, including tests that measure the impact of the product on a vehicle's emission control components or elements of design. For each test, provide the following:

- (a) A description of the test, including identification of the component and vehicle, U.S. EPA engine family, name of the vehicle, test equipment, test protocols, and calibration procedures; and
- (b) A copy of the test report which includes the date and location of the test, the name and position of the person who conducted the test and the test results.

Request No. 7, Response:

In responding to this request, Diesel Ops understands the request as seeking information related to emission testing of products by Diesel Ops or others on the parts identified in Request 1.

Diesel Ops is not the manufacturer of any of the products and has no testing information. We are unfamiliar with any manufacturer's supplying emissions information to any retailers. Diesel Ops has not conducted independent tests measuring hydrocarbons (HC), carbon monoxide (CO), NOx, and/or PM, including tests that measure the impact of the product on a vehicle's emission control components or elements of design.

Request No. 8

For products that are identified in response to Request 1 above, state whether you or the manufacturer submitted an application for an Executive Order to the California Air Resources Board and provide a copy of the application for each product. State whether each component received an Executive Order exempting the components from California's emission control system anti-tampering law, California Vehicle Code § 27156. If the component received and Executive Order, provide the Executive Order number and state whether the California Air Resources Board required you to change the component or application in order to receive approval.

Request No. 8, Response:

In responding to this request, Diesel Ops understands the request as seeking information related to Diesel Ops, or the manufacturers of parts sold by Diesel Ops, have sought or received an Executive Order from the California Air Resources Board granting an exemption to any part sold from the California emission control system anti-tampering law.

Diesel Ops is not the manufacturer of any of the products and, as such, has not submitted any application to the California Air Resources Board. Diesel Ops cannot confirm whether any of the manufactures have submitted an application to the California Air Resources Board.

Request No. 9

Provide the name and address of each location where you have stocked and/or are currently stocking any of the products identified in response to Request 1. The term “stocked” or “stocking” shall mean temporary or long term storage of materials for potential use, sale, or delivery. This definition includes, but is not limited to, the storage of materials within warehouses, vehicles, and/or shipping containers.

Request No. 9, Response:

In responding to this request, Diesel Ops understands the request as seeking information related to locations at which Diesel Ops has “stocked” or is “stocking” products identified in Request 1.

Many items identified in Request No. 1 are offered for sale, sold or distributed to customers on a drop shipment basis and as such are not warehoused or stocked by Diesel Ops. Those items are shipped from the manufacturer or other distributors directly to the customers.

Diesel Ops has previously stocked products identified in Request 1 at 321 W University Dr, Rochester, MI 48307 and 2239 Star Ct, Rochester Hills, MI 48309. These locations are no longer occupied by Diesel Ops and no products are currently stocked at those locations.

Diesel Ops is currently stocking some products in Request 1 at its principal place of business, 2956 Frembes Rd, Waterford Twp, MI 48329.

Request No. 10

Identify all persons consulted in preparing the answers to this Request for Information including his/her title(s), the request(s) to which each individual responded, and the period of time for which each individual is providing a response.

Request No. 10, Response:

In responding to this request, Diesel Ops understands the request as seeking information related to the name(s) and title(s) of the people consulted in preparing the responses to this Information Request along with the time period for which the response was prepared.

Responses US EPA Request to Provide Information Pursuant to Clean Air Act, dated February 15, 2018

- Nicholas Piccolo, member of Diesel Ops, LLC, was the party primarily responsible for preparing the responses to this Information Request.
- Jeff Detkowski, member of Diesel Ops, LLC, assisted with collecting marketing materials and product identification.
- Andrew Burry, member of Diesel Ops, LLC, assisted in collecting product manuals and product identification.
- Natalie Piccolo, bookkeeper, assisted with gathering sales and purchasing reports from the Diesel Ops computer system.

Enclosure 2

Appendices for Diesel Ops, LLC.
Responses to the February 15, 2018 U.S.
Environmental
Protection Agency Section 208(a)
Information Request

USB Drive 1
USB Drive 2 (Contains Confidential
Business Information)